

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
ESTHER LERNER,  
on behalf of herself and all others similarly situated

Plaintiff,

-against-

FMS INVESTMENT CORP. and  
ARROW FINANCIAL SERVICES LLC

Defendants  
-----X

CLASS ACTION COMPLAINT

Plaintiff, by and through her undersigned attorney, alleges upon knowledge as to herself and her own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendants and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the defendant's violation of §1692 *et seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

### JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

### PARTIES

4. Plaintiff Esther Lerner (hereinafter "Lerner") is a resident of the State of New York, Kings County. On or about October 1, 2007, plaintiff received an initial debt collection notice from defendant FMS Investment Corp.

5. Defendant FMS Investment Corp. (hereinafter "FMS") is a Maryland business corporation engaged in the business of collecting debts with its principal place of business located in Schaumburg, Illinois. Defendant regularly attempts to collect debts alleged to be due another.

6. Defendant Arrow Financial Services, L.L.C. is a Delaware limited liability company engaged in the business of collecting debt. It maintains a New York City Department of Consumer Affairs Debt Collection Agency license. Its Registered Agent is the C T Corporation System, 111 Eighth Avenue, New York, NY 10011.

### CLASS ACTION ALLEGATIONS

7. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of herself and all consumers who have received debt collection notices and/or letters from the defendants which are in violation of the FDCPA, as of the date of plaintiff's complaint, and their successors in interest

(the "Class"). Excluded from the Class are the defendants herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendants, including, without limitation, persons who are officers, directors, employees, associates or partners of FMS Investment Corp. and Arrow Financial Services, L.L.C.

8. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

9. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, hundreds of persons have received debt collection notices from the defendants which violate various provisions of the FDCPA.

10. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

- a. Whether the defendants violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(10) and 1692g(b).
- b. Whether plaintiff and the Class have been injured by the defendant's conduct;
- c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendants wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether plaintiff and the Class are entitled to declaratory and/or injunctive relief.

11. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

12. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

13. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

14. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

15. Defendants have acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

16. On August 17, 2007, New York State Attorney General Andrew M. Cuomo announced an agreement with First Premier Bank concerning the finding that First Premier misrepresented account set-up and participation fees, annual fees, late fees, overlimit fees, credit limit increase fees as well as fees for paying online, accessing an account or additional card fees.

17. On or about October 1, 2007, defendants did send to the plaintiff an initial collection letter. Copy of said letter is annexed hereto as Exhibit A.

18. The October 1, 2007 letter attempted to collect a debt on behalf of defendant Arrow Financial Services. The original creditor is identified as First Premier.

19. On October 11, 2007, Defendant FMS Investment Corp received by facsimile transmission a letter which disputed the validity of the debt, disputed the ownership of the debt and requested the address of the original creditor. Exhibit B.

20. Defendant FMS Investment Corp directly contacted Plaintiff concerning a disputed yet unverified debt by telephone on October 23, 2007 at 12:45 p.m.

21. On October 24, 2007, defendant FMS Investment Corp. again contacted Ms. Lerner by letter which stated, "[Y]ou recently disputed the validity of your account and/or your balance and other information. Under instruction from our client, we have referred your account back to Arrow Financial Services and they will handle your dispute directly. For all future inquiries relating to your FIRST PREMIER account, please contact Arrow Financial Services in writing at the address provided below. We have forwarded your correspondence to Arrow Financial Services." Exhibit C.

22. Defendant FMS violated 15 U.S.C. § 1692g(b) by failing to provide verification of the disputed debt and then contacting the consumer who has timely disputed a debt, in writing.

23. Defendants FMS and Arrow attempted to collect First Premier debt which included fees, charges and expenses which are neither authorized by the agreement nor permitted by law.

24. As a result of defendants abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

FIRST CAUSE OF ACTION  
(Violations of the FDCPA)

25. Each of the above allegations is incorporated herein.

26. Defendants debt collection attempts violate various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(10) and 1692g(b), by attempting to collect disputed debts it has not evidenced and whose principal amount included fees determined to be abusive and unfair.

27. As a result of defendants violations of the FDCPA, plaintiff has been damaged and is entitled to statutory damages, costs and attorney's fees.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;

b) Awarding plaintiff statutory damages;

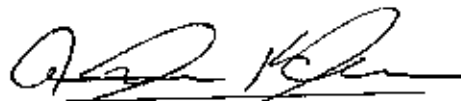
c) Awarding class members the maximum statutory damages.

- d) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: November 1, 2007  
Uniondale, New York



Abraham Kleinman (AK-6300)  
KLEINMAN LLC  
626 RexCorp Plaza  
Uniondale, New York 11556-0165  
Telephone (516) 522-2621  
Facsimile (888) 522-1692







**Notice to Wisconsin Residents:**

This collection agency is licensed by the Office of the Administrator of the Division of Banking,  
P.O. Box 7876, Madison, Wisconsin 53707.

**Notice to North Carolina Residents:**

North Carolina Permit # 4018

**Notice to Arizona Residents:**

FMS Services (Debt Collection), 3226 North Central Ave, Phoenix, AZ 85012

**Notice to Minnesota Residents:**

This collection agency is licensed by the Minnesota Department of Commerce

**Notice to Oregon Residents:**

FMS Investment Corp., 8700 SW 26<sup>th</sup> Avenue, Suite S, Portland, OR 97219

**Notice to New York City Residents:**

New York City Department of Consumer Affairs License# 1187280

**Notice of Colorado Residents:**

The following is required by Colorado law: It does not contain a complete list of consumer rights under State and Federal law: FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE [WWW.AGO.STATE.CO.US/CADO/CADOMAIN.CFM](http://WWW.AGO.STATE.CO.US/CADO/CADOMAIN.CFM).

The following is required by California law: It is not a complete list of the rights consumers have under state and federal law: The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 8 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC HELP or [www.ftc.gov](http://www.ftc.gov).



ESTHER LERNER  
1555 CARROLL STREET,  
BROOKLYN, NY 11213

VIA FACSIMILE: 800-889-3002

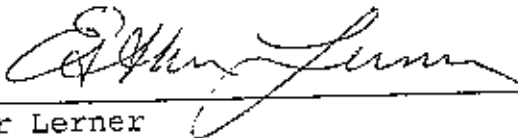
October 10, 2007

FMS Investment Corp  
PO Box 681515  
Schaumburg, IL 60168-1515

RE: Original Account# 4610078701652133  
Reference # 000883039

To Whom It May Concern:

1. I hereby dispute the validity of this debt.
2. I dispute that Arrow Financial Services is the owner and creditor of this account.
3. Please send me verification evidencing that Arrow Financial Services both purchased this disputed debt from First Premier and presently owns this disputed account.
4. Please obtain verification of this disputed debt and mail a copy of the verification to me.
5. Please send me the full legal name of the Creditor to whom this disputed debt is owed pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(a)(2).
7. Please send me the address of the original creditor.

  
\_\_\_\_\_  
Esther Lerner

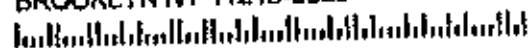
**EXHIBIT C**

Case 1:07-cv-04703-ARR-RER Document 1 Filed 11/09/07 Page 14 of 14 PageID #: 14  
PO BOX 881515  
SCHAUMBURG IL 60168-1515

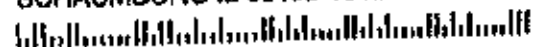


FMS Services  
PO Box 881535  
Schaumburg, IL 60194

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PODV7600403618 103976  
ESTHER LERNER  
1655 CARROLL ST  
BROOKLYN NY 11213-5329



FMS SERVICES  
PO BOX 881515  
SCHAUMBURG IL 60168-1515



October 24, 2007

Account # :  
4610078701652133

Reference # :  
000883039

Amount Due :  
[REDACTED]

✂ Detach Upper Portion And Return With Payment ✂

This letter is from FMS Services. Our client, Arrow Financial Services has placed your FIRST PREMIER account with us for collection.

You recently disputed the validity of your account and/or your balance and other information. Under instructions from our client, we have referred your account back to Arrow Financial Services and they will handle your dispute directly.

For all future inquiries relating to your FIRST PREMIER account, please contact Arrow Financial Services in writing at the address provided below. We have also forwarded your correspondence to Arrow Financial Services.

#### MAIL CONTACT

Arrow Financial Services  
Attention: Customer Care Department  
5998 Touhy Avenue  
Niles, Illinois 60174

THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.